

**Internal Revenue Service**

**199935068**  
Department of the Treasury

Index Number: 0865.07-09

Washington, DC 20224

Person to Contact:

Telephone Number:

Refer Reply To:

CC:INTL:Br5: PLR-102111-99

Date:

June 2, 1999

TY: 1998

Taxpayer	=
X	=
Y	=
Date a	=
Date b	=
Date c	=
Date d	=

Dear :

This is in reply to your letter dated January 12, 1999, requesting rulings under sections 865 of the Internal Revenue Code.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification upon examination.

Taxpayer has approximately 490 subsidiaries as of the end of Date a. Of these subsidiaries, approximately 46 are banks within the meaning of section 585(a)(2) of the Code. In addition, Taxpayer has a significant number of wholly owned subsidiaries that are financial service entities as defined within the meaning of section 1.904-4(e)(3) of the regulations.

On Date b, Taxpayer, which prior to the merger was named X, acquired Y in a tax-free transaction under section 368(a)(2)(D). The acquisition will constitute a reverse acquisition within the meaning of section 1.1502-75(d)(3). Consequently, the

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Taxpayer's affiliated group will terminate as of the merger date and become part of the Y's affiliated group.

Taxpayer, through several of its financial service entities, holds foreign loans. Pursuant to separate rulings as requested by Y on Date c and X on Date d, prior period consolidated tax returns did include all banks and all financial services entities within one affiliated group for purposes of allocating and apportioning losses with respect to eligible loans as defined by Section 4(c) of Notice 89-58.

The allocation and apportionment of losses derived from eligible loans of banks (as defined in section 585(a)(2)) included in an affiliated group as defined in section 1.861-11T(d)(1) are determined by applying Notice 89-58. Notice 89-58 generally provides that losses recognized with respect to certain loans made in the ordinary course of the bank's trade or business are allocated to the class of interest income generated by such instruments, and will be apportioned between U.S. source interest income and one or more separate categories of foreign source interest income included within the class of gross income. The losses must be apportioned according to the asset method of apportionment that is based upon the outstanding amount of loans generating interest income in such groupings. Section 4(d) of the Notice permits, by ruling, the inclusion in the affiliated group of banks as defined in section 4(b) of the Notice corporations that are financial services entities within the meaning of section 1.904-4(e)(3) of the regulations and that are members of the affiliated group under section 1.861-11T(d)(1).

Taxpayer represents that both the bank and the financial services subsidiaries of Taxpayer are members of the same affiliated group as defined in section 1.861-11T(d)(1) and that both the bank and the financial services subsidiaries of Taxpayer are financial services entities as defined in section 1.904-4(e)(3) for all years for which this ruling is requested.

Based solely on the information and representations submitted, it is held as follows:

1. Taxpayer, for purposes of allocating and apportioning losses with respect to eligible loans as defined by section 4(c) of Notice 89-58, shall include all banks and financial services entities within one affiliated group, and shall also include in such affiliated group any subsequently created or acquired subsidiaries engaged in substantially similar activities provided that such corporations are financial services entities as defined in section 1.904-4(e)(3) and that all such corporations are members of the affiliated group that includes Taxpayer as defined in section 1.861-11T(d)(1).

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2. Debt instruments held by bank or financial services subsidiaries of Taxpayer, or any subsequently created or acquired subsidiaries engaged in substantially similar activities that are financial services entities as defined in section 1.904-4(e)(3) and that are members of the affiliated group that includes Taxpayer as defined in section 1.861-11T(d)(1) and that are eligible loans as defined in section 585(b)(3) but for the fact that the debt instruments are not held by a financial institution as defined in section 1.585-1(b) shall be treated as eligible loans for purposes of allocation of losses under Notice 89-58.

3. Notwithstanding the above, in the event Taxpayer is eligible and chooses to apply the rules of Temporary Reg. section 1.865-1T to taxable year Date a, or to any Taxable year prior to Taxable year Date a, Taxpayer must, in accordance with the requirements of section 1.865-1T(f)(2) apply the temporary regulations to all subsequent years including Taxable year Date a. Accordingly, if Taxpayer chooses to apply Temporary Reg. Section 1.865-1T to Taxable year Date a, or to any Taxable year prior to taxable year Date a, Notice 89-58 and holdings 1 and 2 of this ruling will be superceded by the temporary regulations in taxable year Date a and any prior year to which the temporary regulations are made applicable.

No opinion is expressed as to the tax treatment of the transaction under other provisions of the Code and regulations including whether the loans are eligible loans under section 585 (b)(3), or about the tax treatment of any conditions existing at the time of, or effects resulting from transactions that are not specifically addressed by the above ruling.

A copy of this ruling must be attached to the appropriate federal income tax returns.

This ruling is directed only to the taxpayer(s) requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

Paul Epstein  
Senior Technical Reviewer, Branch 5  
Office of Associate Chief Counsel (International)  
Badge Number 50-01999

CC:DD, Examination

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